In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 8768 of 2004

Date of Decision: 13.8.2007

M/s. United Bus Service Regd.

....Petitioner

Versus

State Appellate Tribunal, Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice M.M.S. Bedi.

Present: Mr. H.S. Sawhney, sr. Advocate with
Mr. B.S. Giri, advocate
for the petitioner.

Mr. Gurminder Singh, Addl. A.G., Punjab
for respondent No.2.

Mr. Baldev Kapoor, Sr. Advocate with
Mr. Rohit Kapoor, Advocate
for respondent No.3.

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J.S. Khehar, J.

The petitioner – M/s. United Bus Service Regd., is engaged in the business of passenger transport in the State of Punjab. The petitioner was granted two regular stage carriage permits with one return trip daily on the Patiala – Nawanshahar via Ropar route by the State Transport Commissioner, Punjab (exercising the powers of the Regional Transport Authority) on 16.8.1991. The State Transport Appellate Tribunal, Punjab (hereinafter referred to as the Appellate Tribunal) set aside the order by

which the aforesaid permits were granted to the petitioner on 17.5.2004. The effort of the petitioner through the instant writ petition is to have the aforesaid permits restored to it. The facts leading up to the present controversy are being narrated hereunder.

The existing passenger transport services were found to be insufficient. The State Transport Commissioner, Punjab, accordingly, invited applications for the grant of six regular stage carriage permits with three return trips daily on the Patiala – Nawanshahar via Ropar route, through a notice published in the Motor Transport Gazette Weekly, Chandigarh, dated 8.6.1988.

In all, 31 applications were received in furtherance of the notice dated 8.6.1988. On 25.12.1988, four regular stage carriage permits with two return trips daily were issued for the aforesaid route. Out of these, two regular stage carriage permits with one return trip daily, were granted to Dev Raj son of Banta Ram (out of the scheduled castes quota), and two regular stage carriage permits with one return trip daily, were granted to the Pepsu Road Transport Corporation. It is, therefore apparent, that the State Transport Commissioner, Punjab, chose not to allot two regular stage carriage permits with one return trip daily, in furtherance of the notice dated 8.6.1988.

Dissatisfied with the action of the State Transport Commissioner, Punjab, in not allotting two regular stage carriage permits with one return trip daily, the Pepsu Road Transport Corporation, M/s. Patiala Bus Highways Pvt. Ltd. (respondent No.3), M/s. Ambala Bus Syndicate Pvt. Ltd. (respondent No.4) and M/s. United Bus Service Regd. (the petitioner) preferred appeals, wherein their primary prayer was, that the

remaining two regular stage carriage permits with one return trip daily, should be allotted to them. The State Transport Appellate Tribunal, Punjab, accepted the appeals by an order dated 5.12.1990, wherein a direction was issued to the State Transport Commissioner, Punjab, to allot the remaining two regular stage carriage permits with one return trip daily, to the most suitable applicant(s) out of the appellants.

While complying with the order passed by the Appellate Tribunal dated 5.12.1990, the State Transport Commissioner, Punjab, granted two regular stage carriage permits for plying one return trip daily, to M/s. United Bus Service Regd. (the petitioner herein) by an order dated 16.8.1991. While granting the aforestated permits to the petitioner, the State Transport Commissioner, Punjab, rejected the claim of M/s. Patiala Bus Highways Pvt. Ltd. (respondent No.3) and M/s. Ambala Bus Syndicate Pvt. Ltd. (respondent No.4) for the award of the said permits as they were considered ineligible for grant of the permits under reference in view of the provisions of the Motor Vehicles Act, 1988, as they were already having more than ten permits at that time. In this behalf, it would be pertinent to mention, that under the Motor Vehicles Act, 1988, a private transport company could not be granted more than ten permits under Section 71(4) of the Motor Vehicles Act, 1988 (when the allotment of permits was made by the State Transport Commissioner, Punjab, on 16.8.1991).

Aggrieved by the order passed by the State Transport Commissioner, Punjab, dated 16.8.1991, M/s. Patiala Bus Highways Pvt. Ltd. (respondent No.3) and M/s. Ambala Bus Syndicate Pvt. Ltd. (respondent No.4) preferred two separate appeals. The Appellate Tribunal by its order dated 17.5.2004, accepted the appeals preferred by respondents

No.3 and 4, inasmuch as, the order passed by the State Transport Commissioner, Punjab, dated 16.8.1991 was set aside and the case was remanded back for passing a fresh order. This determination was rendered by the Appellate Tribunal, on the basis of its conclusion, that the permits under reference had to be issued under the framework and parameters of the Motor Vehicles Act, 1939, as the said statutory enactment regulated the award of permits, at the time when the six regular stage carriage permits for plying three return trips daily on the Patiala – Nawanshahar via Ropar route, were notified in the Motor Transport Gazette Weekly, Chandigarh, dated 8.6.1988.

The appellate order dated 17.5.2004 had the effect of cancellation of the permits allotted to the petitioner (M/s. United Bus Service Regd.). Through the instant writ petition, the petitioner has impugned the appellate order dated 17.5.2004.

The controversy raised by the rival parties requires the determination of one issue only, i.e., whether the State Transport Commissioner, Punjab, ought to have acted under the mandate of the provisions of the Motor Vehicles Act, 1939 which was admittedly the statutory provision in existence at the time of issuance of the notice dated 8.6.1988 (vide which applications for award of the permits under reference were invited). In case, the answer to the aforesaid query is in the affirmative, the decision at the hands of the Appellate Tribunal, would be valid. The contention of the learned counsel for the petitioner, however, is that the grant of two regular stage carriage permits with one return trip daily on the Patiala – Nawanshahar via Ropar route, were awarded to the petitioner by an order dated 16.8.1991, and as such, the same had to be

considered in the framework and the parameters of the Motor Vehicles Act, 1988 (whereby the Motor Vehicles Act, 1939 was repealed). If the instant contention advanced at the hands of the petitioner comes to be accepted, the award of two regular stage carriage permits with one return trip daily on the route under reference, to the petitioner by the State Transport Commissioner, Punjab (vide his order dated 16.8.1991) would be valid. And for the same reason, the rejection of the candidature of M/s. Patiala Bus Highways Pvt. Ltd. (respondent No.3) and M/s. Ambala Bus Syndicate Pvt. Ltd. (respondent No.4) by the State Transport Commissioner, Punjab (vide his order dated 16.8.1991), would be valid.

In order to substantiate his contention, that the Motor Vehicles Act, 1988 would regulate the grant of the remaining two regular stage carriage permits with one return trip daily, on the Patiala – Nawanshahar via Ropar route, learned counsel for the petitioner vehemently contends, that the issue in hand is to be determined with reference to the date when the competent authority i.e. the State Transport Commissioner, Punjab, took up for his consideration the claims of the applicants who had sought permits. According to the learned counsel for the petitioner, the relevant date for the aforesaid purpose can either be 5.12.1990 (i.e. the date when the Appellate Tribunal directed the State Transport Commissioner, Punjab, to consider the appellants for the award of two regular stage carriage permits with one return trip daily, on the route under reference) or in the alternative, 16.8.1991 (i.e. when the State Transport Commissioner, Punjab, granted both the said permits to the petitioner). In order to substantiate his aforesaid assertion, learned counsel for the petitioner has placed reliance on Sub-sections (1) and (2) of Section 217 of the Motor Vehicles Act, 1988. The

aforesaid sub-sections are being extracted hereunder:-

> "(1) The Motor Vehicles Act, 1939 (4 of 1939), and any law corresponding to that Act in force in any State immediately before the commencement of this Act in that State (hereafter in this section referred to as the repealed enactments) are hereby repealed.
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> (2) Notwithstanding the repeal by sub-section (1) of the repealed enactments,-
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> (a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or exemption granted, or any confiscation made, or any penalty or fine imposed, any forfeiture cancellation or any other thing done, or any other action taken under the repealed enactments, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made, granted, done or taken under the corresponding provision of this Act;
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> (b) any certificate of fitness or registration or license or permit issued or granted under the repealed enactments shall continue to have effect after such commencement under the same conditions and for the same period as if this Act had not been passed;
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> (c) any document referring to any of the repealed enactments or the provisions thereof, shall be construed as referring to this Act or to the corresponding provision of this Act;
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> (d) the assignment of distinguishing marks by the registering

authority and the manner of display on motor vehicles in accordance with the provision of the repealed enactments shall, after the commencement of this Act, continue to remain in force until a notification under sub-section (6) of section 41 of this Act is issued;

(e) any scheme made under section 68 C of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding law, if any, in force in any State and pending immediately before the commencement of this Act shall be disposal of in accordance with the provisions of section 100 of this Act;

(f) the permits issued under sub-section (1A) of section 68F of the Motor Vehicles Act, 1939 (4 of 1939), or under the corresponding provision, if any, in force in any State immediately before the commencement of this Act shall continue to remain in force until the approved scheme under Chapter VI of this Act is published."

It is the submission of the learned counsel for the petitioner, by placing reliance on Section 217(1), that on the promulgation of the Motor Vehicles Act, 1988 w.e.f. 1.7.1989, the Motor Vehicles Act, 1939 came to be repealed, and as such, the same could not be taken into consideration for award of permits on the basis of the decision of the Appellate Tribunal, dated 5.12.1990, as well as, when the permits were actually awarded on 16.8.1991.

The second contention of the learned counsel for the petitioner is based on a reliance on Sub-clause (a) of Clause (2) of Section 217 of the Motor Vehicles Act, 1988. In this behalf, it is the submission of the learned

counsel for the petitioner, that the term "order" in Section 217 (2)(a) of the Motor Vehicles Act, 1988, would include an order passed for the award of permits under the provisions of the Motor Vehicles Act. Emphasising on the words "...in so far as it is not inconsistent with the provisions of the Act...", learned counsel for the petitioner emphatically points out, that an order passed under the provisions of the Motor Vehicles Act, 1939, could only be deemed to have been made under the corresponding provisions of the Motor Vehicles Act, 1988, if the same was not inconsistent with any of the provisions of the Motor Vehicles Act, 1988. Accordingly, if an "order" had been passed validly while the Motor Vehicles Act, 1939 was operational, the same would cease to be operational with the coming into force of the Motor Vehicles Act, 1988, unless the "order" passed earlier was in consonance with the provisions of the subsequent enactment. It is, therefore submitted, that an "order " passed after the promulgation of the Motor Vehicles Act, 1988 i.e. after 1.7.1989 had to be in consonance with the provisions of the Motor Vehicles Act, 1988.

On the instant issue, the vehement contention of the learned counsel for the petitioner is, that respondents No.3 and 4 would exceed the maximum limit of permits delineated under Section 71(4) of the Motor Vehicles Act, 1988, if the claim of the applicant had to be considered under the mandate of the Motor Vehicles Act, 1988. Section 71(4) of the Motor Vehicles Act, 1988, is being extracted hereunder:-

> "71(4). A Regional Transport Authority shall not grant more than five stage carriage permits to any individual or more then stage carriage permits by any company (not being State Transport Authority)."

The third contention of the learned counsel for the petitioner is based on Sub-clause (f) of Section 217(2) of the Motor Vehicles Act, 1988 which mandates, that permits issued under the Motor Vehicles Act, 1939, immediately before the applicability of the Motor Vehicles Act, 1988 i.e. immediately before 1.7.1989 were preserved so as to remain in force till the approval of a scheme under Chapter VI of the Motor Vehicles Act, 1988. Accordingly, it is the contention of the learned counsel for the petitioner, that the protection of permits issued prior to the enforcement of the Motor Vehicles Act, 1988, does not leave any ambiguity in the intent expressed by the legislation, namely, that after the enforcement of the Motor Vehicles Act, 1988, the grant of permits was to be regulated only in terms of the mandate of the provisions of the Motor Vehicles Act, 1988.

In order to repudiate the submission advanced by the learned counsel for the petitioner, it is the vehement contention of the learned counsel for respondent No.3, that applications were invited for six regular stage carriage permits with three return trips daily, on 8.6.1988. Having considered the claims of the 31 applicants, who had applied for the grant of the aforesaid permits, the State Transport Commissioner, Punjab, awarded four permits with two return trip daily, on 25.12.1988 According to the learned counsel for respondent No.3, the relevant date for consideration can only be 8.6.1988 (i.e. when the notice inviting applications for the permits under reference was published in the Motor Transport Gazette Weekly), or in the alternative, 25.12.1988 (i.e. when four regular stage carriage permits with two return trips daily, were granted by the State Transport Commissioner, Punjab). On both the aforesaid dates (according to the learned counsel for respondent No.3), the Motor Vehicles Act, 1939, was in

force, and as such, the said enactment alone should have been taken into consideration for the award of such permits. In fact, in order to substantiate his aforesaid contention, learned counsel for respondent No.3 posed a question, namely, how can a statutory enactment which had not seen the light of the day when the notice inviting applications for grant of permits was issued, regulate the grant of such permits ? It is the submission of the learned counsel for respondent No.3, that on the relevant date, when the authorities decided to award six stage carriage permits with three return trips daily on the Patiala – Nawanshahar via Ropar route, the Motor Vehicles Act, 1939, was applicable, and as such, the award of the said permits should be determined with reference to the provisions of the Motor Vehicles Act, 1988. In this behalf, as a matter of logic, it is submitted, that it would be anomalous if out of the six regular stage carriage permits under reference, it is held, that four were rightfully granted in terms of the mandate of the Motor Vehicles Act, 1939, whereas, the remaining two ought to be granted in terms of the Motor Vehicles Act, 1988.

The second contention of the learned counsel for respondent No.3 is, that it was only under the Motor Vehicles Act, 1988, that an outer limit was laid down, i.e. that not more than five permits could be granted to an individual and not more than ten permits could be granted to a company. In this behalf, it is also the contention of the learned counsel for respondent No.3, that there was no provision under the Motor Vehicles Act, 1939, fixing any limit on permits which an individual or company could be awarded. Accordingly, it is the contention of the learned counsel for respondent No.3, that if this Court arrives at the conclusion (as is the case of respondent No.3), that the procedure and provisions contained in the Motor

Vehicles Act, 1939, should have been taken into consideration by the State Transport Commissioner, Punjab, while awarding the remaining two stage carriage permits with one return trip daily on the route under reference, then the fact, that respondent No.3 possessed a certain number of permits could not invalidate the claim of respondent No.3 for award of further permits.

In continuation of the second submission, it is also the contention of the learned counsel for respondent No.3, that respondent No.3 was not in possession of the prescribed outer limit of permits w.e.f. 1.7.1989 (i.e. when the Motor Vehicles Act, 1988 came into force) till 16.8.1991 (i.e. when the State Transport Commissioner, Punjab, rejected its claim), and as such, the claim of respondent No.3 could not have been rejected on the ground, that respondent No.3 already had more than ten permits.

The three issues canvassed on behalf of the petitioner and the two issues canvassed on behalf of respondent No.3 (as have been noticed hereinabove) are interconnected and need to be disposed of collectively. The same are, accordingly, being dealt with collectively hereunder.

Having examined Section 217 of the Motor Vehicles Act, 1988, we have no hesitation to conclude, that under the mandate of Clause (2) (a) thereof, an "order" passed prior to 1.7.1989 i.e. the date on which the Motor Vehicles Act, 1988 came into force, would be valid only if the same was in consonance with the provisions of the Motor Vehicles Act, 1988. Accordingly, to sustain an order passed prior to the promulgation of the Motor Vehicles Act, 1988, it would be imperative for the aforesaid order to be in consonance with the provisions of the Motor Vehicles Act, 1988. What is also sought to be preserved in reference to the controversy raised in

the instant writ petition, are permits issued under the provisions of the Motor Vehicles Act, 1939. Such permits which had been issued prior to 1.7.1989 despite their inconsistency with the provisions of the Motor Vehicles Act, 1988, would continue to be valid, in view of the express mandate of Section 217 (2) (f) of the Motor Vehicles Act, 1988. A natural analogy of the aforesaid provisions is, that an "order" including an order of awarding route permit(s) after the enforcement of the Motor Vehicles Act, 1988 with effect from 1.7.1989 would have to abide by the framework and parameters of the Motor Vehicles Act, 1988. Undoubtedly, before the promulgation of the Motor Vehicles Act, 1988, out of the six regular stage carriage permits with three return trips daily, on the Patiala – Nawanshahar via Ropar route, only four regular stage carriage permits with two return trips daily, had been issued prior to 1.7.1989. The protection envisaged under Section 217 (2) (f) of the Motor Vehicles Act, 1988, would protect, if at all, the said four regular stage carriage permits with two return trips daily, for the route under reference. Since two regular stage carriage permits with one return trip daily remained unallotted till the Appellate Tribunal, by its order dated 5.12.1990 directed the State Transport Commissioner, Punjab, to allot the same, it is apparent, that for the two regular stage carriage permits with one return trip daily on the route under reference, remained vacant and unallotted till 5.12.1990. By this time, the Motor Vehicles Act, 1988 had been enacted. The same was made operational w.e.f. 1.7.1989. After 1.7.1989, no order could be passed which was not in consonance with the provisions of the Motor Vehicles Act, 1988. This view of ours flows from the apparent effect of Section 217 (2)(a) of the Motor Vehicles Act, 1988, which obviates any scope of any inconsistency in any action, after the

promulgation of the Motor Vehicles Act, 1988. In the proposition being dealt with, it is not possible to accept the contention advanced by the learned counsel representing respondent No.3, that the procedure and norms applicable for issuing the permits when the six regular stage carriage permits with three return trips daily, on the route in question, were notified in the Motor Transport Gazette Weekly, Chandigarh, on 8.6.1988, would alone be applicable. It is also not possible for us to accept, that because four regular stage carriage permits with two return trips daily, out of the total of six regular stage carriage permits with three return trips daily, notified on 8.6.1988 had been granted on the basis of the parameters expressed in the Motor Vehicles Act, 1939, constitute a valid justification in following the parameters laid down under the Motor Vehicles Act, 1939, for the remaining two regular stage carriage permits with one return trip daily for the route under reference. As already noticed hereinabove, the parameters changed w.e.f. 1.7.1989 i.e. the date when the provisions of the Motor Vehicles Act, 1988 became operational. After 1.7.1989, all permits could legitimately be awarded only on the basis of the parameters stipulated under the Motor Vehicles Act, 1988.

For the same reasons as we have recorded hereinabove, we are satisfied, that the State Transport Commissioner, Punjab, was fully justified in determining the eligibility of the applicants (while passing the order dated 16.8.1991) on the touchstone of Section 71(4) of the Motor Vehicles Act, 1988. The State Transport Commissioner, Punjab, declined to award any of the remaining permits to M/s. Patiala Bus Highways Pvt. Ltd. (respondent No.3) and M/s. Ambala Bus Syndicate Pvt. Ltd. (respondent No.4) on account of the fact, that the grant of permits to them would be in

violation of the upper limit of permits prescribed in Section 71(4) of the Motor Vehicles Act, 1988.

The second issue canvassed on behalf of respondent No.3 has two components. Firstly, whether the provisions of Section 71(4) of the Motor Vehicles Act, 1988, would be applicable for determining the eligibility of respondent No.3 for the award of the remaining two regular stage carriage permits with one return trip daily for the route under reference. And secondly, whether respondent No.3 was actually ineligible on the basis of the permits already held by it on the date of consideration in terms of the mandate of Section 71(4) of the Motor Vehicles Act, 1988 ? We have already answered the first component hereinabove while concluding, that the provision of the Motor Vehicles Act, 1988 would be applicable for the allotment of the remaining two regular stage carriage permits with one return trip daily for the route under reference. We now endeavour to deal with the second component, namely, whether respondent No.3 was actually already having more than ten permits when its claim came up for consideration for the grant of the remaining two regular stage carriage permits with one return trip daily, for the route under reference. As already noticed hereinabove, it is the vehement contention of the learned counsel for respondent No.3, that respondent No.3 did not have in its name ten or more permits when the matter was taken up for consideration by the State Transport Commissioner, Punjab, on 16.8.1991 (i.e. when the claim of respondent No.3 was rejected on the assumption, that the same would violate Section 71(4) of the Motor Vehicles Act, 1988).

So as to repudiate the second component, out of the second submission advanced on behalf of respondent No.3, learned counsel for the

petitioner has invited our attention to Section 71(5) of the Motor Vehicles Act, 1988. The same is being extracted hereunder:-

> "71(5). In computing the number of permits to be granted under sub-section (4), the permits held by an applicant in the name of any other person and the permits held by any company of which such applicant is a director shall also be taken into account."

According the learned counsel for the petitioner, if the permits held by respondent No.3 are clubbed with the permits held by the various directors of respondent No.3, it would emerge, that respondent No.3, had more than ten permits on the relevant date of consideration noticed hereinabove.

Having given our thoughtful consideration to the second component, we are of the view, that the number of permits under Section 71 (4) of the Motor Vehicles Act, 1988, will not only include the number of permits held in the name of the concerned company, but will also include permits held by the directors of the company in their own name. We find no merit in the contention of the learned counsel for respondent No.3, specially on account of the fact, that the learned counsel representing respondent No.3 very fairly conceded, that the number of permits calculated in terms of the mandate of Section 71(5) of the Motor Vehicles Act, 1988, as per our determination hereinabove, held by respondent No.3 would be in excess of ten on the relevant date of consideration (i.e. on 16.8.1991).

The third contention advanced by the learned counsel for respondent No.3 is based on Section 89(3) of the Motor Vehicles Act, 1988. Section 89 of the Motor Vehicles Act, 1988, is being extracted hereunder:-

"89. Appeals-

(1) Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit under section 82, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) aggrieved by the refusal to grant permission under section 83, or

(g) aggrieved by any other order which may be prescribed,

may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

(2) The State Government shall constitute such number of Transport Appellate Tribunals as it thinks fit and each such Tribunal shall consist of a judicial officer who is not below the rank of District Judge or who is qualified to be a Judge of the

> High Court and it shall exercise jurisdiction within such area as may be notified by that Government.
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> (3) Notwithstanding anything contained in sub-section (1)or sub-section (2), every appeal pending at the commencement of this Act, shall continue to be proceeded with and disposed of as if this Act had not been passed."

According to the learned counsel for respondent No.3, irrespective of the provisions of Sub-sections (1) and (2) of Section 217 of the Motor Vehicles Act, 1988 (on which we have based our conclusions hereinabove), an appeal pending consideration at the time of commencement of the Motor Vehicles Act, 1988 i.e. on 1.7.1989, would continue to be proceeded with, and would be disposed of, as if the Motor Vehicles Act, 1988, had not been promulgated. Based on his aforesaid submission, it is the vehement contention of the learned counsel for respondent No.3, that the controversy relating to the grant of six regular stage carriage permits with three return trip daily, remained pending adjudication with the Appellate Tribunal, from time to time till the award of the permits by the State Transport Commissioner, Punjab. In this behalf, it is pointed out, that when the controversy in connection with the grant of the permits under reference, was taken up before the Appellate Tribunal for the first time, the Appellate Tribunal disposed of the appeals by a common order dated 5.12.1990. An issue pertaining to the same controversy came up before the Appellate Tribunal once again, and on this occasion, the Appellate Tribunal passed the impugned order dated 17.5.2004. It is, therefore, the submission of the learned counsel for respondent No.3, that the appellate proceedings initiated in the matter must be deemed to be continuing till 5.12.1990/17.5.2004.

Accordingly,under the fiction created by Section 89(3) of the Motor Vehicles Act, 1988, till the disposal of the appeals under reference, the determination by the authorities had to be rendered by accepting, that the Motor Vehicles Act, 1988, had not come into existence.

In order to repudiate the instant contention, learned counsel for the petitioner has relied on Section 64 of the Motor Vehicles Act, 1939, which is being extracted hereunder:-

"64. Appeals-

(1) Any person-

(a) aggrieved by the refusal of the State or a Regional Transport Authority to grant a permit, or by any condition attached to a permit granted to him, or

(b) aggrieved by the revocation or suspension of the permit or by any variation of the conditions thereof, or

(c) aggrieved by the refusal to transfer the permit to the person succeeding on the death of the holder of a permit, or

(d) aggrieved by the refusal of the State or a Regional Transport Authority to countersign a permit, or by any condition attached to such countersignature, or

(e) aggrieved by the refusal of renewal of a permit, or

(f) being a local authority or police authority or an association which, or a person providing transport facilities who, having opposed the grant of permit, is aggrieved by the grant thereof or by any condition attached thereto, or

(g) aggrieved by the refusal to grant permission under sub-section (1) or sub-section (2) of Section 59, or

(gg) aggrieved by an order of the State Transport Commissioner or Deputy State Transport Commissioner or any officer subordinate to them in exercise and discharge of such powers and functions with which they have been specifically authorised under Section 44-A.

(h) aggrieved by a reduction under sub-section (1-A) of Section 60 in the number of vehicles or routes or areas covered by a permit, or

(hh) aggrieved by an order of forfeiture passed under sub-section (4) of Section 45 or under sub-section (9) of Section 63, or

(i) aggrieved by any other order which may be prescribed,

may, within the prescribed time and in the prescribed manner, appeal to the State Transport Appellate Tribunal constituted under sub-section (2), who shall, after giving such person and the original authority an opportunity of being heard, give a decision thereon which shall be final.

(2) The State Government shall constitute for the State a State Transport Appellate Tribunal which shall consist of a judicial officer not below the rank of a District Judge :

Provided that in relation to a Union territory the Tribunal may consist of the Administrator of that territory or any officer who has judicial experience.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), every appeal pending at the commencement of the Motor Vehicles (Amendment) Act, 1969 shall be proceeded with and disposed of as if this Act had not been passed."

It is the vehement contention of the learned counsel for the petitioner, that the ambit and scope for preferring appeals under Section 64 of the Motor Vehicles Act, 1939, was much wider than the one for preferring appeals under Section 89 of the Motor Vehicles Act, 1988. It is, therefore, the submission of the learned counsel for the petitioner, that Sub-section (3) of Section 89 of the Motor Vehicles Act, 1988, must be read to mean, that the right availed of by an aggrieved party under Section 64 of the Motor Vehicles Act, 1939, which had a wider scope, had not been taken away on the reduction of the appellate scope redetermined under Section 89 of the Motor Vehicles Act, 1988.

In our considered view, the submission advanced by the learned counsel for the petitioner, as has been noticed in the foregoing paragraph, could be the only possible intent expressed in Sub-section(3) of Section 89 of the Motor Vehicles Act, 1988. In our view, the acceptance of the interpretation placed by the learned counsel for respondent No.3 on Section 89(3) of the Motor Vehicles Act, 1988, would create a dis-harmonious situation, inasmuch as, by the mandate of Section 217(1) of the Motor Vehicles Act, 1988, the earlier enactment i.e. the Motor Vehicles Act, 1939 stood repealed. Furthermore, Section 217(2) (a) of the Motor Vehicles Act, 1988 (already extracted hereinabove) leaves no scope for any doubt, that an action taken under the Motor Vehicles Act, 1939, would be deemed to have been issued/made/granted/done/taken under the corresponding provisions of

the Motor Vehicles Act, 1988, only if, the same was not inconsistent with the provisions of the Motor Vehicles Act, 1988. If the contention of the learned counsel for respondent No.3 is accepted, i.e., an appeal pending under Section 64 of the Motor Vehicles Act, 1939, would have to be decided/adjudicated upon under the mandate of the Motor Vehicles Act, 1939, as if, the Motor Vehicles Act, 1988, had not come into existence, it would be impossible to give the intended effect to Section 217(2)(a) which postulates, that a notification/rule/regulation/order validly issued under the provisions of the Motor Vehicles Act, 1939, would become inoperational/ineffective after the promulgation of the Motor Vehicles Act, 1988, if it was inconsistent with the provisions of the Motor Vehicles Act, 1988. So as to give effect to both the provisions i.e. Sections 89(3) and 217 (2) of the Motor Vehicles Act, 1988, as they presently exist, the scope of Section 89(3) of the Motor Vehicles Act, 1988 shall have to be limited to mean, that the same envisages only the continuation of the appeals filed prior to 1.7.1989 under the Motor Vehicles Act, 1939, even though after the Motor Vehicles Act, 1988 came into force, the said appeals would not have subsisted under the subsequent enactment. It is, therefore, not possible for us to accept the instant contention of the learned counsel for the petitioner.

For the reasons recorded hereinabove, we are of the view, that the grant of the remaining two regular stage carriage permits for plying one return trip daily on the Patiala – Nawanshahar via Ropar route (consequent upon the passing of the order at the hands of the Appellate Tribunal, dated 5.12.1990) had to be regulated by the provisions contained in the Motor Vehicles Act, 1988. We are also of the view, that respondents No.3 and 4 were ineligible under Section 71(4) of the Motor Vehicles Act, 1988, for the

award of the aforesaid permits as they were already having more than ten permits at the time of consideration of their names. As such, we find no infirmity in the determination at the hands of the State Transport Commissioner, Punjab, dated 16.8.1991 in awarding the permits under reference to the petitioner (M/s. United Bus Service Regd.).

For the reasons recorded hereinabove, the impugned order passed by the Appellate Tribunal dated 17.5.2004 is hereby set aside, whereas, the order passed by the State Transport Commissioner, Punjab, dated 16.8.1991, awarding the petitioner two regular stage carriage permits for plying one return trip daily on the Patiala – Nawanshahar via Ropar route, is upheld.

The instant writ petition stands disposed of accordingly.

(J.S. Khehar)
Judge.

(M.M.S. Bedi)
Judge.

August 13, 2007
sk.